

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**GLORIA M BLICHER  
110½ W NORTH  
PO BOX 64  
MANLY IA 50456**

**MILLS FLEET FARM  
3200 – 4<sup>TH</sup> ST SW  
MASON CITY IA 50401**

**RONALD J WAGENAAR  
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MASON CITY IA 50401-2947**

**Appeal Number: 04A-UI-07775-CT  
OC: 02/01/04 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gloria Blicher filed an appeal from a representative's decision dated July 12, 2004, reference 03, which denied benefits based on her separation from Mills Fleet Farm. After due notice was issued, a hearing was held by telephone on August 10, 2004. Ms. Blicher participated personally and was represented by Ronald Wagenaar, Attorney at Law. The employer participated by Ron Hengesteg and Jerry Brantner, Assistant Managers. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Blicher was employed by Mills Fleet Farm from March 22 until May 31, 2004. She began the employment working as a cashier in the employer's convenience store. She was transferred from that position because she could not handle the demands of the job. After two weeks of employment, she was transferred to working in the store in the clothing department. She was working from 24 to 28 hours each week at the time of separation. Ms. Blicher was discharged because her work did not meet the employer's standards.

On April 29, the employer conducted a review of Ms. Blicher's progress. She was rated below expectations in ability to handle the job, productivity, cooperation, time management, and attendance. She was rated as unsatisfactory in carrying out instructions. She was notified that improvement had to be shown or her training would end unsuccessfully. On May 23, another review was conducted. She was still rated below expectations on ability to handle the job, cooperation, and carrying out instructions. The employer noted that she had shown improvement but still had a problem listening to more experienced coworkers and following directions.

The decision to discharge Ms. Blicher was due to complaints received on or about May 24. A customer complained that she was unprofessional and not very helpful. A service desk attendant complained that Ms. Blicher had argued with her in the presence of a customer. The customer had come in to exchange a pair of jeans. A call was placed to the appropriate department and Ms. Blicher responded by bringing out a pair of jeans. It was the incorrect pair of jeans, which resulted in a verbal dispute between Ms. Blicher and the service desk attendant. Ms. Blicher was notified of her discharge on May 31, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Blicher was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Blicher was discharged because she failed to meet the employer's standards during the training period. She demonstrated improvement in her performance between her first review on April 29 and her second review on May 23. She was at all times working to the best of her abilities. The fact that there was a customer complaint does not establish an act of misconduct on Ms. Blicher's part. The customer only indicated that she was unprofessional and not very helpful. The complaint is too vague to allow the administrative law judge to determine what Ms. Blicher did to bring about the complaint. The fact that she had a disagreement with a coworker in the presence of a customer establishes nothing more than a good-faith error in judgment.

It is clear from the evidence that Ms. Blicher was not a satisfactory employee. However, the evidence does not establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. An individual who was discharged because she could not meet the employer's standards during the probationary period is not guilty of misconduct. See 871 IAC 24.32(5). While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job

Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 12, 2004, reference 03, is hereby reversed. Ms. Blicher was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b